IN THE

Supreme Court of the United States

October Term, 1951.

No. 616.

DAN M. WATTS and JOHN H. WATTS, *Petitioners*,

v.

UNITED STATES OF AMERICA and JOSEPH H. BROWN, United States Attorney, *Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the FIFTH Circuit.

PETITIONERS' REPLY BRIEF.

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OCTOBER TERM, 1951.

No. 616.

DAN M. WHITE and JOHN H. WHITE, *Petitioners,*

v.

UNITED STATES OF AMERICA and JOSEPH E. BROWN, UNITED STATES ATTORNEY, *Respondents.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITIONERS' REPLY BRIEF.

Because respondent's Brief in Opposition does not correctly state the question presented, and does not meet the issues presented by the petition, counsel deems it advisable to file this reply brief.

QUESTIONS PRESENTED.

The questions presented in this case are not as stated in the Brief in Opposition (Br. 2), but are based upon entrapment. The questions involved are as set out in the petition (p. 2) as follows:

"1. May Revenue Agents who well know that taxpayers are attempting to come within the 'voluntary disclosure'

policy of the Treasury Department secure evidence from such taxpayers who believe they have secured immunity and then use such facts as evidence in criminal proceedings? Or is such procedure a violation of the taxpayer's rights under the Fourth and Fifth Amendments to the Constitution?

"2. When Treasury Agents are seeking facts regarding income tax evasion, are they under any duty to warn taxpayers of their Constitutional rights against self-incrimination, and that anything they may say may be used against them in a criminal action?

"3. Shall the evidence and information in the hands of representatives of the United States, obtained from the petitioners as outlined above, be suppressed and enjoined?"

We do agree with the Government's statement of the question presented to the extent that "petitioners' disclosures to Treasury Agents were voluntary" but insist such disclosures were made, as the Agents well knew, in reliance upon the widely publicized "voluntary disclosure" policy of the Treasury Department.

The facts clearly show that the petitioners have been entrapped by the promise of immunity from criminal prosecution. Over a period of years, the taxpayers explained complicated transactions in the belief they were completing the "voluntary disclosures". In so doing, the Agents had a "hundred or more" conferences with one of the petitioners. (R. 161)

The Government justifies the Agents' actions on the ground that after the Whites had been trapped and the evidence and explanations secured, they were warned when formal written statements were taken at the conclusion of the examination. (Br. 11) We submit that such justification does violence to the established law as set out at pages 16-17 of the petition.

The Government's brief does not deny that in the *Lustig* case, 163 F (2d) 85 (CCA 2), relied upon by both lower

courts in the case at bar, the taxpayers were warned at the very outset of the investigation that they did not come within the "voluntary disclosure" policy. In the *Lustig* case there was no element of entrapment as in the case at bar.

In the case at bar it should be remembered that the "voluntary disclosures" were made before the Agents had even requisitioned the individual returns. (R. 132-134, 141-142) Without the returns it could not have been determined if income had been understated. (R. 135, 150) Consequently, the Government's statement (Br. 9) that "With the aid of Dan M. White's original returns it could have determined from the books of the corporation that Dan M. White had concealed his income" is misleading.

In this case as a result of the flattery of hope of immunity, petitioners have as effectively had the self-incriminating matter wrung from them as if the Government Agents had ransacked their homes and offices without any warrant of search or seizure, or had extorted the statements from them with actual violence.

CONCLUSION.

If the United States can promise immunity from prosecution, know that citizens believe they have come within the promise, secure incriminating evidence as a result of this situation, warn the citizen at the conclusion of the investigation that he has not met the requirements of the "policy", and then use the evidence thus obtained in a criminal proceeding, the Constitution and this Court have completely failed in protecting the citizen against self-incrimination.

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April 10, 1952.